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September 1, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: SUBSTITUTE VERSION – REQUEST FOR HIGHLY
CONFIDENTIAL TREATMENT
ClearCaptions, LLC
CG Docket Nos. 03-123 and 13-24

Dear Ms. Dortch,

ClearCaptions, LLC (“ClearCaptions”), pursuant to the *Second Protective Order*, DA 12-858, released May 31, 2012 in CG Docket No. 03-123¹ hereby requests Highly Confidential treatment of certain information contained in the enclosed Notice of Ex Parte (including attachments). ClearCaptions is also submitting a redacted version of this letter pursuant to the *Second Protective Order*.²

ClearCaptions hereby requests that all information contained after the headings *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** and before the headings *****END HIGHLY CONFIDENTIAL INFORMATION***** be treated as Highly

¹ See *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”); see also 47 C.F.R. §§ 0.457, 0.459. Because there is no protective order in effect for CG Docket No. 13-24 at this time, the Consumer and Governmental Affairs Bureau staff has instructed ClearCaptions that it should file this request and the accompanying Notice of Ex Parte only in CG Docket No. 03-123 pending release of a Protective Order for CG Docket No. 13-24.

² *Second Protective Order* ¶ 12.

Ms. Marlene H. Dortch
September 1, 2017
Page 2

Confidential Information under the *Second Protective Order*.³ As described below, the information contained in those headings is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*, and is proprietary and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act (“FOIA”).⁴ Pursuant to paragraph 3 of the *Second Protective Order*, ClearCaptions has obtained Commission staff’s written preliminary approval to designate the subject information as Highly Confidential.⁵

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, ClearCaptions requests that, in the event that the Commission denies ClearCaptions’ request for confidentiality, the Commission return the materials without consideration of the contents therein.⁶

(1) Identification of the specific information for which confidential treatment is sought.

ClearCaptions hereby seeks Highly Confidential treatment for all of the information in the enclosed Notice of Ex Parte (including attachments) that is contained after the headings *****BEGIN HIGHLY CONFIDENTIAL***** and before the headings *****END HIGHLY CONFIDENTIAL*****, which is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*.⁷

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The attachment to the Notice of Ex Parte was provided to the identified FCC staff during the meeting reported in the Notice of Ex Parte.

(3) Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.

The subject information includes, or would potentially permit the determination of, highly sensitive ClearCaptions IP CTS operating cost information that would cause harm to ClearCaptions if disclosed. Indeed, revealing this information may allow competitors to

³ *Second Protective Order* ¶ 2.

⁴ *Second Protective Order* Appendix A; 5 U.S.C. § 552(b)(4).

⁵ *Second Protective Order* ¶ 3.

⁶ 47 C.F.R. § 0.459(e).

⁷ *Second Protective Order* Appendix A.

Ms. Marlene H. Dortch
September 1, 2017
Page 3

calculate Highly Confidential Information for ClearCaptions. This operating cost information is properly designated Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order* as “[i]nformation that provides granular information about [ClearCaptions’] past, current, or future costs, revenues, marginal revenues, or market share, and future dividends.”⁸ Further, this information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.⁹ Accordingly, ClearCaptions hereby requests that such information be treated as Highly Confidential Information under the *Second Protective Order* and not be made routinely available for public inspection.

(4) Explanation of the degree to which the information contains a service that is subject to competition.

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff’s written preliminary approval to designate the designated information as Highly Confidential Information pursuant to paragraph 3 of the *Second Protective Order*. ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

(5) Explanation of how disclosure could result in substantial competitive harm.

The presence of competitors in the IP CTS market and the likelihood of competitive injury to ClearCaptions threatened by release of this information should compel the Commission to withhold the information designated as Highly Confidential Information from public disclosure. The Commission has provided assurances that it is “sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”¹⁰

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff’s written preliminary approval to designate the subject information as Highly Confidential Information

⁸ *Second Protective Order* Appendix A.

⁹ 5 U.S.C. § 552(b)(4).

¹⁰ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

Ms. Marlene H. Dortch
September 1, 2017
Page 4

pursuant to paragraph 3 of the *Second Protective Order*.¹¹ ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

- (7) *Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.*

The subject information is not ordinarily available to the public or to any third parties.

- (8) *Justification of the period during which the submitting party asserts that material should not be available for public disclosure.*

As described above, the subject information contains highly sensitive ClearCaptions cost and other information covered by paragraph 3 of the *Second Protective Order* that could cause significant competitive injury to ClearCaptions if disclosed.¹² For this reason, ClearCaptions respectfully requests that the Commission protect this information from public disclosure indefinitely.

- (9) *Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.*

As the subject information is being submitted voluntarily, ClearCaptions requests that, in the event that the Commission denies ClearCaptions' request for confidentiality, the Commission return the materials without consideration of the contents therein.

¹¹ *Second Protective Order* ¶ 3.

¹² 5 U.S.C. § 552(b)(4).

Ms. Marlene H. Dortch
September 1, 2017
Page 5

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,



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September 1, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
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Re: **SUBSTITUTE VERSION – Notice of Ex Parte – Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Captioned Telephone Service – CG Docket Nos. 03-123 and 13-24¹**

Dear Ms. Dortch:

On August 30, 2017, Michael Strecker, Vice President of Regulatory Affairs, ClearCaptions LLC (“ClearCaptions” or “Company”) and Paul C. Besozzi, counsel for ClearCaptions, met with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Ajit Pai, and Robert Aldrich, Front Office Legal Advisor, Consumer and Government Affairs Bureau, regarding prospective Internet Protocol Captioned Telephone Service (“IP CTS”) rate structure matters.

Mr. Strecker reviewed the key elements of, and justifications for, an IP CTS rate structure model developed by ClearCaptions for the Commission to consider as it formulates future IP CTS rates. Those key elements primarily included: (a) the need for a tiered IP CTS rate structure and (b) assuming the Commission were to adopt a “cost-based” rate structure,

¹ Based on discussions with the Consumer and Government Affairs Bureau staff, ClearCaptions is filing this Notice of Ex Parte in CG Docket No. 03-123 subject to the Second Protective Order therein. *See Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”). The staff has permitted this approach because there is currently no similar Protective Order applicable to CG Docket No. 13-24.

Ms. Marlene H. Dortch
September 1, 2017
Page 2

the wisdom of an “operating margin approach” to compensate IP CTS providers for capital costs.

On each of these two key issues ClearCaptions pointed out the following:

If the current Multi-state Average Rate Structure system (“MARS”) is to be replaced, ClearCaptions recommended that the Commission consider the benefits of a tiered rate structure for IP CTS. There is recent precedent for doing so as reflected in the Commission’s decision regarding the four-year Video Relay Service (“VRS”) rate structure.² Therein, the FCC recognized that there were “vast differences in the per-minute costs of VRS providers, which roughly track the vastly different market shares of each current provider.”³ The Commission concluded that maintaining a tiered rate structure was “most likely to ensure that functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources.”⁴ In the final analysis, the FCC concluded that “under a tiered rate structure the Commission can ensure greater efficiency without sacrificing competition, by tailoring compensation rates more closely to the costs of those competitors falling within each tier.”⁵ Citing similarities in the current estimated IP CTS marketplace, ClearCaptions respectfully submitted that this same rationale should apply to development of any revised the IP CTS rate-structure. The Company also explained why such a tiered structure would be preferable to a single-rate methodology in light of the current and potential future IP CTS marketplace competition.⁶

ClearCaptions also recommended that in formulating any cost-based structure for IP CTS rates that the Commission consider an “operating margin approach” to compensate IP CTS providers for their allowable capital costs. Again, the Company noted that the recent *VRS Order* provides precedent for such an approach. ClearCaptions stated that the range of approximately 8-12% operating margin accepted in the *VRS Order* also provides a reasonable basis for IP CTS rate structuring.

ClearCaptions provided the attached slides in support of these points and its 4-tiered IP CTS rate model and reviewed how the data therein supported these two key points, including the potential savings to the TRS Fund if adopted.⁷

² *In the Matter of the Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Report and Order, FCC 17-86 (rel. July 6, 2017) (“*VRS Order*”).

³ *VRS Order* ¶ 31.

⁴ *Id.* ¶ 33.

⁵ *Id.* ¶ 37

⁶ As the Commission noted in the *VRS Order* in rejecting a single rate structure, where there is an imbalance in providers’ cost structures, “this method would be likely to result in greatly increased TRS Fund expenditures because the most efficient provider—with the overwhelming bulk of minutes—would be compensated at a rate far in excess of its actual costs.” *Id.* ¶ 32.

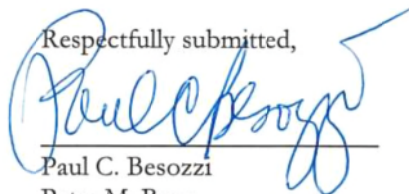
⁷ The slides contain Highly Confidential Information subject to the *Second Protective Order*.

Ms. Marlene H. Dortch
September 1, 2017
Page 3

Finally, the Company reiterated that it looks forward to participating in the process for developing a restructured IP CTS rate methodology.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules.⁸

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Paul C. Besozzi", is written over a horizontal line.

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cc: Zenji Nakazawa
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⁸ 47 C.F.R. § 1.1206(b)(1).

4 Tier IP CTS Rate Model



At Home



At Work



On The Go

CONFIDENTIAL INTERNAL DOCUMENTS

PRIVILEGED MATERIALS – DO NOT FORWARD THIS PRESENTATION OR THE INFORMATION CONTAINED HEREIN

HIGHLY CONFIDENTIAL

Current Estimated Market Share

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

ClearCaptions Cost of Goods Sold

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

- There is a clear differentiation in COGS between providers who provide their own technological solution vs those that outsource

ClearCaptions Pro-Forma Opex at Volume

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

ClearCaptions 4 Tier Model

4 Tier Model					
	Minute Threshold			Tier Min value	Proposed Rate
Tier 1	-	to	3,500,000	3,500,000	1.9467
Tier 2	3,500,000	to	7,000,000	3,500,000	1.4289
Tier 3	7,000,000	to	10,000,000	3,000,000	1.2475
Max Tier	10,000,000	>			1.0403

- Due to the overall scale of IP CTS, the tiers needs to accommodate the realities of the market and industry.
- *** BEGIN HIGHLY CONFIDENTIAL INFORMATION*** *** END HIGHLY CONFIDENTIAL INFORMATION
- An ASR rate would be a flat rate reduction to the tiers that enabled slight margin improvements to encourage our conversion to ASR.
 - ASR would not impact the current tier breaks, but instead would be a lower rate at each break for traffic processed with a new ASR process. While we are deep in our creation of ASR technologies for IP-CTS, we are not far enough along to predict the reduction from the above proposed rates.

4 Tier Rate Model vs ClearCaptions Pro-Forma Opex

*** BEGIN HIGHLY CONFIDENTIAL INFORMATION ***

*** END HIGHLY CONFIDENTIAL INFORMATION ***

Benefits of a 4 Tier Model

	<u>CY 2017</u>	<u>Avg. Realized Rate</u>
Minutes	377,985,187	
MARS Payments	\$ 735,823,763	\$1.95
4 Tier Payments	\$ <u>590,267,774</u>	\$1.56
Savings to the Fund	\$ 145,555,989	

** Based on ClearCaptions estimated Industry minutes for CY 2017*

Benefits of ClearCaptions 4 Tier Model

- For CY 2017, saves the fund approximately \$146M
- Enables efficient, competitive providers to remain financially viable
- Better aligns rates with actual provider costs while achieving a reasonable operating margin
- Establishes a consistent and reliable glide path while adjusting to market realities: share distribution, scale economies and provider costs
- Ensures providers continue to seek efficiencies as they gain scale